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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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BANNER & WITCOFF AND ATTORNEYS FOR ACCENTURE
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EXAMINER

FISCHETTI, JOSEPH A

ART UNIT PAPER NUMBER

3627

DATE MAILED: 02/12/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/910,159

Applicant(s) *SW*

DEVITT ET AL.

Examiner

Joseph A. Fischetti

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 23 January 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-34 is/are pending in the application.
- 4a) Of the above claim(s) 12-34 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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Election/Restrictions

Claims 12-34 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected inventions, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 6.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3,5,6,9¹⁰ and 11^{at} rejected under 35 U.S.C. 102(b) as being anticipated by Rose.

Rose discloses a method of identifying clothing combinations, the method comprises:

(a) identifying a first article of clothing and a search request (col. 8 lines 48-51 discloses the user selecting START AGAIN which is read as a search request and then selecting an article of clothing form one of a plurality of such articles;

(b) identifying a set of rules for selecting clothing combinations (col. 8 lines 52 et seq. selection of the fashion reflection submenu is read as identifying since it must be identified before it is selected) ;

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(c) transmitting the identification of the first article of clothing, the search request and the identification of the set of rules to a rules engine Fig. 5 illustrates the result of such a transmission which occurs once the user inputs; and

(d) receiving an identification of a second article of clothing that satisfies the set of rules (see cols 9 and 10 under Do's to wear).

Re claim 2: wherein the set of rules includes rules for permissible color combinations see col. 9 line 63, col. 10 line s36, 23-26 .

Re claim 3: wherein the set of rules include rules for permissible pattern combinations see col. 9 line 30, col. 10 lines 5,14.

Re claim 10: identifying an owner of the first article of clothing is met by the fact that the user inherently owns one piece.

Re claim 5: selecting the first article of clothing from a selection of clothing in a brick and mortar store (col. 1 lines 10-50 discuss resolving problem of trying on in department stores).

RE claims 6, 9: selecting the first article of clothing from a selection of clothing offered for sale by a web site (col. 1 lines 10-50 discuss resolving problem of trying on in internet stores).

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RE claim 11: receiving the identification of a third article of clothing that satisfies the search request is read as the third of the plural suggestions set forth under the categories DO WEAR in cols 9 and 10.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 7, and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rose. Whether the article is owned by the user or not does not constitute a patentability because ownership of an article is not a patentable feature. Also, official notice is taken to the notorious well known practice of comparing an owned piece of garment to one in a store, or between the garment one holds in one's closet.

Claims 1, and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rose in view of Markman. Rose discloses the invention substantially as claimed except that there is no disclosure of using an RF tag to identify an article of clothing. However, Markman discloses such a tag 14. It would be obvious to modify Rose with the step of reading a tag embedded in the first article of clothing because the motivation would be to enhance through put of data.

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The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication should be directed to Joseph A. Fischetti at telephone number (703) 305-0731.

Joseph A. Fischetti
Pr. Inv. Exam
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